

TAYLOR v RYAN

THE HIGH COURT

1979 2732 ✓ 79

BETWEEN:



JOHN TAYLOR

Plaintiff

and

NORA RYAN AND BRENDAN J. JONES

Defendants

Judgment delivered on the 10th day of March 1983 by

Finlay P.

This is a claim brought by the Plaintiff against the first-named Defendant for rescission of a contract for the sale of certain premises for consequential remedies and for damages for misrepresentation and against the second-named Defendant for damages for negligence and breach of contract in carrying out services as a Solicitor to the Plaintiff.

The first-named Defendant did not enter any defence in the action and judgment against her was obtained by default, the damages to be assessed by a Judge sitting without a jury.

The second-named Defendant did enter a defence and defended the action and also claimed by third-party procedure indemnity against the first-named Defendant.

When the matter came on for hearing before me, the Plaintiff had not set down against the first-named Defendant the assessment of the damages arising from his judgment by default and the second-named Defendant had not set down against the first-named Defendant his claim for contribution by way of third-party procedure. The only issue therefore which fell to be determined by me was the claim of the Plaintiff against the second-named Defendant.

The material facts as I find them on the evidence before me may thus be summarised. By contract dated the 6th December 1976 the Plaintiff who is a farmer agreed to purchase from the first-named Defendant for the sum of £29,000 part of the lands of Garryduff East comprised on Folios 9932 and 12641 of the County Tipperary together with the dwellinghouse and licensed premises thereon with out-offices and yard attached. The sale included the seven-day publican's ordinary licence attached to the premises. It was the intention of the Plaintiff in entering into this contract to provide for one of his sons who intended to get married and who had experience in the licensed trade

a residential public house in the village of Dunderum in County Tipperary.

Having signed this contract, the Plaintiff instructed the second-named Defendant to carry out the legal work concerning the purchase of the premises. The Defendant on the 30th December 1976 delivered requisitions on title to Messrs. Flynn and Company, Solicitors for the vendor. At requisition No. 66 he enquired as follows:

"specify the exact type of licence attached to the property and give full particulars of all exemptions or other privileges attached thereto."

To that the reply delivered on the following day, the 31st December, was "copy licence furnished ordinary licence". Prior to the delivery and reply to the requisitions on title the Solicitor for the vendor had furnished to this Defendant a photostatic copy of the current licence which was stated to be a publican's licence ordinary in the name of Mrs. Nora Ryan issued by the Customs and Excise in Limerick on the 15th November 1976. The photostatic copy supplied was a photograph of the face of the licence only but on the

back of the original there was contained the following note

"This form of licence is used for both (1) public houses and (2) certain hotels licensed under Section 2(2) of the Licensing (Ireland) Act, 1902. The hotel licences are subject to certain restrictions which do not apply to public houses".

Whilst the photostatic copy did not contain this note the Defendant stated in evidence that he was aware of the existence of such a note on all license papers applicable to ordinary publicans licences.

Shortly after signing the contract for purchase and paying the deposit and prior to the completion of the sale, the Plaintiff as a result of something he was told by a person residing in the village of Dundrum paid a special visit to this Defendant to warn him that he had been informed that there was no licence attaching to the premises or that there was something wrong with the licence. This Defendant showed him the copy licence which he had received and reassured him that the premises were licensed. Upon further discussion with his informant, the Plaintiff returned approximately two days later to insist that there

was something wrong with the licence. I take the view on the evidence that it is probable that at this interview some reference was made by the Plaintiff to the fact that this was only a hotel licence or that the premises might only have been licensed as a hotel. This Defendant enquired from the Plaintiff as to whether to his knowledge the premises were conducted in the fashion of an ordinary seven-day publican's licensed premises and he assured him that they were. He asked him whether there was a hatch or dispense bar or whether there was the ordinary bar and he was informed that there was an ordinary bar and this Defendant then again reassured the Plaintiff. The Plaintiff was so convinced of the correctness of the information which he had otherwise received that he actually paid a further visit to the Solicitors for the vendor but was informed by them that the matter was fully in order. The closing of the sale then proceeded in the ordinary way and it was closed on the 9th March 1977, the Plaintiff on that date paying to the vendor the balance of the purchase money and the vendor executing a transfer at the request of the Plaintiff

jointly to himself and his son.

The Plaintiff to the knowledge of this Defendant had financed the purchase of the premises by raising a term loan of £31,000 repayable over a 7-year period from the Bank of Ireland Tipperary.

Upon the completion of the sale, the Plaintiff immediately with the assistance of his sons and the employment of contractors commenced to reconstruct the bar portion of the premises and demolish certain buildings in the yard so as to provide a modern type of lounge bar accommodation.

By June of 1977 this Defendant was in a position to proceed with the application to the District Court for an ad interim transfer of the licence and it was then revealed by the Garda Authorities that the licence attached to the premises was a hotel licence only. The premises had only six bedrooms in total and were for practical purposes incapable of being reconstructed into a hotel containing not less than 10 bedrooms separately set aside for the accommodation of guests. By reason of the fact that the

premises were not situated in a town and that there was a seven-day ordinary publican's licensed premises within one mile of them, it was not possible under the licensing code to have them licensed even by the extinguishment of existing licences.

As soon as it became clear that there was a real difficulty with regard to the licensing of the premises, in the month of July of 1977 this Defendant warned the Plaintiff not to expend any further sums on the reconstruction of the premises and the Plaintiff then ceased the work which he had commenced.

By February of 1978 after exhaustive enquiries and the obtaining of legal advice, this Defendant came to the conclusion that it was not possible by any means or at any expense to license the premises and so informed the Plaintiff. The Plaintiff has not, in fact, since that time disposed of the premises.

Liability

On these facts, the Plaintiff's contention is that having been specifically and expressly warned by the

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Plaintiff of doubts or anxieties concerning the licensing status of the premises that the Defendant should have made an enquiry or enquiries before completion of the sale from the Customs and Excise Authorities and from the District Court and Circuit Court offices to ascertain the true nature of the licence attached to the premises and that if he had he would have ascertained that it was a licence granted by way of hotel licence only and would have been able to avoid the completion of the sale by the Plaintiff.

This Defendant's case is that he had been a Solicitor practising in Tipperary for approximately 20 years and that he was aware of his own knowledge that these premises had during the entire of that period traded with all the outward appearances of an ordinary seven-day public house; that it never had been a hotel during that period and that he was aware that the licence was regularly and annually renewed without opposition in the Courts in the area. Having satisfied himself that it had been so renewed in 1976 and having seen the licence paper issued in pursuance of that

renewal by the Customs and Excise it is contended that he had exercised a standard of reasonable care concerning this particular issue and that the extraordinary licensing situation of the premises indicated in the above summary of the facts was an unforeseeable and unforeseen difficulty.

I have come to the conclusion that the Plaintiff is entitled to succeed on the issue of liability. I am satisfied that the Defendant in general terms in the carrying out of this work connected with this sale was careful and indeed very commendably expeditious. I was very impressed by this Defendant as a witness, his candour and accuracy in evidence being strikingly correct. I am driven to the conclusion however that since the existence of a valid licence attached to these premises was a fundamental part of the reason why the Plaintiff was purchasing them and since the Plaintiff himself put this Defendant on notice in a persistent fashion of a doubt existing concerning the validity of the licence that it was not a sufficient precaution for this Defendant to take to rely on his knowledge of the factual situation

or on the knowledge of the Plaintiff of the trading, custom and habits of the premises. After events established that a simple direct enquiry to the District Court office in Thurles which is the appropriate area for the premises licensed in Dundrum would have revealed that a licence was recorded at all material times as being what is known as a hotel licence. In my view in the particular circumstances of this case and on the express warnings given such an enquiry was a necessary reasonable standard of professional skill and care on the part of this Defendant. I therefore conclude that the Plaintiff is entitled to damages.

Damages

On behalf of the Plaintiff, damages were laid under three headings, that is

1. Damages for the loss of bargain.
2. The monies expended on carrying out reconstruction works to the premises which it is alleged are of no value to the Plaintiff, and
3. The interest charged to the Plaintiff on the

monies borrowed from the Bank for the purchase of the premises.

I will deal with each of these headings separately.

1. Loss of Bargain

The Plaintiff contended that he was entitled to the loss of bargain consisting of the value of the premises if it had been as represented, premises to which an ordinary seven-day publican's licence was attached as of the date on which he could have effected a re-sale of the premises less the value of the premises at the same date without any intoxicating liquor attached to them.

The Defendant on the other hand contended that the proper basis for the calculation of damages in relation to loss of bargain was the difference, if any, between the value of the premises without a valid intoxicating liquor licence attached to them and the purchase price paid for them by the Plaintiff. The Defendant in making this submission relied upon the decision of Pennycuick J. in Ford and Another .v. White & Co. 1964 2 A.E.R. 755 and the cases therein referred to.

I am satisfied that the Defendant's contention on this issue of law is correct. The case of Ford and Another .v. White & Co. was an action brought by the Plaintiff against the Defendants for professional negligence as Solicitors in advising on and carrying out the purchase of premises and on its facts bears a striking similarity to the case before me. I am satisfied to accept the decision in that case as truly setting out the principle applicable to damages in these circumstances, in particular I would adopt the clear statement at Page 758 in the judgment as follows:

"In the simple case of the purchase of property at a price in excess of its market value as a result of wrong advice, the relevant measure of damages must be the difference between (1) the market value of the property at the date of the purchase and (2) the price actually paid."

To that bare statement of principle, there must be in my view on the facts of this particular case a qualification.

The defect or want in the legal status of this premises arising from the negligence of this Defendant whilst it existed at the time of the completion of the sale was not finally determined by him, this Defendant, until February of 1978 and it would appear to me to be unjust for the Plaintiff to have his damages assessed on the basis of the value at the date of the completion of his purchase when he was expressly advised by this Defendant up to that time that there appeared to be at least a reasonable chance of minimising his loss by various alternative applications under the Intoxicating Liquor Acts which were considered but found eventually not to be sustainable.

The only evidence of value was that tendered by the Plaintiff and in short it was to the effect that in the year 1977 these premises with an ordinary seven-day publican's licence attached to them would have been worth £35,000 and were in that year worth £30,000 without the licence. No evidence was given as to the value of the premises on either assumption in the year 1978 nor was any evidence given as to their value without a licence attached to them in

1976 when the contract was originally made. The Plaintiff did tender evidence that in the year 1979, the premises would probably if "put in order" have been valued with an ordinary seven-day publican's licence validly attached to them for a sum of approximately £75,000 but did not give any evidence as to what their value at that time might be with redecoration or renovation and without a publican's licence.

With regard to damages, the onus is clearly on the Plaintiff and I cannot speculate on what other figures might have been established. I am therefore satisfied that the Plaintiff has not proved any difference between the market value of the property without a licence in February of 1978 and the price which he paid for them. It was indeed contended on behalf of the Defendant that there was a gain to the Plaintiff which should be credited against other headings of loss but this contention, I reject.

2. Monies expended in the partial reconstruction of the premises.

The Plaintiff established through the evidence to my

satisfaction that he expended a sum of £1838.27 in the purchase of material and the payment of wages for reconstruction carried out by his sons with assistance. In addition, he paid a sum of £6,000 to a contractor for completion of the partially renovated premises.

The work that was carried out which was never completed on this Defendant's advice was specially and exclusively designed for the purpose of altering a portion of the premises as a lounge bar and I am satisfied on the Plaintiff's evidence that there is not any quantifiable advantage to him from the work and that therefore this is money which he lost directly as a result of the negligence which I have found. In his damages therefore he is entitled to this sum of £7,838.27

3. Interest

The Plaintiff's arrangement with the Bank was that he obtained a term loan for 7 years repayable by quarterly amounts of £1,820. The Plaintiff drew down the entire of the loan of £31,000 by the 9th March 1977. He made three quarterly payments in June, September and November of 1977

and thereafter made no further repayments on the loan.

The loan with interest now stands at over £60,000.

I am satisfied on the evidence that in order to minimise his loss the Plaintiff should have decided in February 1978 when he received the final advice from this Defendant to offer the premises for re-sale and that if he had done so, it is probable he would have been able to effect a re-sale of them completed by July of 1978.

I accept the Plaintiff's contention that that is therefore the date up to which he is entitled to the interest paid or incurred by him and not the date upon which he could have made the decision to sell. It is probable that at some period between February and July possibly by the end of April he would have received a deposit on a sale which would have somewhat reduced the outstanding amount of his debt to the Bank.

Various calculations of the interest which he owed or would have owed under alternative schemes have been made before me but I am satisfied that the true calculation of his loss must be the actual interest which he had incurred

up to July of 1978 less a calculation of interest saved on a deposit of, say £7,000, plus so much of the three quarterly payments of £1,320 as are referable to interest.

My calculation of these sums is as follows:

Interest to July 1978	£4,143.00
Notional saving on 7% Deposit from April to July	210.00
Interest element in three payments of £1,320	472.00
Total	£4,405.00

I accordingly am satisfied that the Plaintiff is entitled to judgment against the Defendant for a total sum of £12,243.27.

approved.

T. A. Finley

23/3/1983

Cases referred to:

Ford and Another .v. White & Co. 1964 2 A.E.R.

Lake .v. Bushby 1949 2 A.E.R.

Pilkington .v. Wood 1953 2 A.E.R.

Phillips .v. Ward 1946 1 A.E.R.

G. & K. Ladenbau (U.K.) Ltd. .v. Crawley and de Reya
1978 1 A.E.R.